BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

GERARDO OLIVARES	)	
Claimant	)	
VS.	)	
	)	Docket No. 237,793
MID-CONTINENT SPECIALTIES, INC.	)	
Respondent	)	
AND	)	
	)	
WORKERS COMPENSATION FUND	)	

ORDER

Mid-Continent Specialties, Inc., appealed the March 25, 1999 preliminary hearing order entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

This is a claim for a July 7, 1998 accident and injury to the right leg and hip. The Judge ordered Mid-Continent Specialties, Inc., as a principal or "statutory employer", to provide Mr. Olivares with medical treatment.

Mid-Continent contends the Judge erred. It argues that Mr. Olivares failed to prove that his employer, Genaro Morales, had a sufficient payroll to bring the parties within the provisions of the Workers Compensation Act. Therefore, Mid-Continent argues that Mr. Olivares is not entitled to receive any benefits provided by the act. Also, Mid-Continent contends the Judge exceeded his authority by entering a "supplemental" order without requiring a new Application for Preliminary Hearing to be filed.

Conversely, Mr. Olivares argues that the evidence presented proves that Mr. Morales had a sufficient payroll to make the Workers Compensation Act applicable to this accident.

The only issues before the Board on this appeal are:

1. Is the Workers Compensation Act applicable to this accident?

2. Did the Judge exceed his authority by entering the March 25, 1999 order?

FINDINGS OF FACT

After reviewing the record compiled to date, the Board finds:

1. On or about July 7, 1998, Mr. Olivares was working for his brother, Genaro Morales, when he slipped and fell from a roof injuring his right leg and hip. The accident arose out of and in the course of employment.

2. Mr. Olivares was an employee of his brother. But at the time of the accident, Mr. Olivares was doing work that Mid-Continent Specialties, Inc., had subcontracted to Mr. Morales. On the date of accident, Mr. Morales did not have workers compensation insurance coverage.

3. According to counsel's representations to the Judge, Mid-Continent is self-insured for purposes of this claim.

4. The Judge conducted a preliminary hearing on February 25, 1999. On March 8, 1999, the Judge entered an order that provided the parties 10 days to research and provide legal authority and argument on the payroll issues presented in this proceeding.

CONCLUSIONS OF LAW

1. The preliminary hearing order should be affirmed.

2. When a worker is seeking benefits from a principal or "statutory employer", the issue is not whether the immediate employer's payroll meets the threshold amount required by the Workers Compensation Act. Instead, the issue is whether the principal's payroll meets the threshold amount. To do otherwise would allow principles to avoid the act by contracting with small subcontractors having annual payrolls less than $20,000. The act provides:

> (a) Subject to the provisions of K.S.A. 44-506 and amendments thereto, the workers compensation act shall apply to all employments wherein employers employ employees within this state except that such act shall not apply to:
> . . .
>
> (2) any employment, other than those employments in which the employer is the state, or any department, agency or authority of the state, wherein the employer had a total gross annual payroll for the preceding calendar year of not more than $20,000 for all employees and wherein the employer reasonably estimates that such employer will not have a total gross annual payroll for the current calendar year of more than $20,000 for all employees, except that no wages paid to an employee who is a member of the employer's family by marriage or consanguinity shall be included as part of

> the total gross annual payroll of such employer for purposes of this subsection;[1]

And the act further provides:

> (a) Where any person (in this section referred to as principal) undertakes to execute any work which is a part of the principal's trade or business or which the principal has contracted to perform and contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, **the principal shall be liable to pay to any worker employed in the execution of the work any compensation under the workers compensation act which the principal would have been liable to pay if that worker had been immediately employed by the principal;** and where compensation is claimed from or proceedings are taken against the principal, then in the application of the workers compensation act, **references to the principal shall be substituted for references to the employer,** except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom the worker is immediately employed.[2] (Emphasis added.)

3. A principal purpose of K.S.A. 44-503(a) is to "prevent employers from evading liability under the act by the device of contracting with outsiders to do work which they have undertaken to do as a part of their trade or business."[3]

4. As of this time, Mid-Continent has not raised the amount of its payroll as an issue to be decided by the Judge. If Mid-Continent's payroll becomes an issue, the parties may request another hearing to modify the preliminary award.

5. When considering the entire record, the Board concludes that on the date of accident Mr. Olivares, as an employee of a subcontractor, was performing work undertaken by Mid-Continent. Therefore, for preliminary hearing purposes Mid-Continent is responsible for Mr. Olivares' workers compensation benefits.

6. Although it did not brief the issue, in its application for review Mid-Continent questioned the Judge's authority to enter the March 25, 1999 order without requiring the

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[1] K.S.A. 1998 Supp. 44-505.

[2] K.S.A. 1998 Supp. 44-503 and K.S.A. 1998 Supp. 44-503b.

[3] Bright v. Cargill, Inc., 251 Kan. 387, 837 P.2d 348 (1992).

parties to file another Application for Preliminary Hearing. For the reasons set forth below, the Board finds the Judge did not err.

7. It is clear from the Judge's March 8, 1999 order that he was continuing the preliminary hearing proceeding for 10 days to allow the parties additional time to provide legal authority on the issues raised in this claim. After the allotted period had expired, the Judge issued the March 25, 1999 order in which he found Mid-Continent responsible for Mr. Olivares' workers compensation benefits.

8. The Kansas Supreme Court has stated that an important objective of workers compensation law is avoiding cumbersome procedures and technicalities of pleading so that a correct decision may be reached by the shortest and quickest possible route.[4]

9. Further, the administrative law judges are not bound by technical rules of procedure but should give the parties reasonable opportunity to be heard and to present evidence, insure an expeditious hearing, and act reasonably and without partiality.[5] The fair implication is any procedure that is appropriate and not prohibited by the Workers Compensation Act may be used.[6]

WHEREFORE, the Appeals Board affirms the March 25, 1999 preliminary hearing order entered by Judge Robert H. Foerschler.

IT IS SO ORDERED.

Dated this ____ day of May 1999.

BOARD MEMBER

c: C. Albert Herdoiza, Kansas City, KS
Kip A. Kubin, Overland Park, KS
Derek R. Chappell, Ottawa, KS
Genaro Morales, 5115 E 22nd St, Kansas City, MO 64127
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director

[4] Pyeatt v. Roadway Express, Inc., 243 Kan. 200, 756 P.2d 438 (1988).

[5] K.S.A. 1998 Supp. 44-523(a); Pyeatt, *supra*.

[6] Bushey v. Plastic Fabricating Co., 213 Kan. 121, 515 P.2d 735 (1973); Drennon v.Braden Drilling Co., Inc., 207 Kan. 202, 483 P.2d 1022 (1971).